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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,039	10/07/2003	Theodore F. Rivera	RSW920030158US1	5277

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EXAMINER

MEHRMANESH, ELMIRA

ART UNIT PAPER NUMBER

2113

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,039

Applicant(s)

RIVERA ET AL.

Examiner

Elmira Mehrmanesh

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or '(f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The application of Rivera et al., for a "System and method for defect projection in transaction management in a target computer environment" filed October 7, 2003, has been examined.

Claims 1-17 are presented for examination.

Information disclosed and listed on PTO 1449 has been considered.

Claims 1-16 are rejected under 35 USC § 101.

Claims 1-17 are rejected under 35 USC § 102.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claim 1, the claim language is directed to an arrangement of software. "A method for assessing the probability...comprising steps of gathering...analyzing...and predicting..." is merely an algorithm. The steps of assessing, gathering, analyzing, and predicting do not provide a process that has a result that can be substantially repeatable or a process that substantially produces the same result again. Therefore the process does not provide concrete results. The claim language as a result is not directed to a practical application.

As per claim 9, the limitation of "a system" in view of Applicant's disclosure, specification, paragraph [0014], page 4, defect gathering logic, defect analysis logic, and prediction logic can be implemented in software. Therefore the claim language is directed to an arrangement of software. Computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gullo et al. (U.S. PGPUB No. 20020078403).

As per claim 1, Gullo discloses a method for assessing the probability of transaction success of a business transaction that will interact with one or more

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software applications in a target computer environment (Fig. 2), the method comprising the steps of:

gathering defect data for the software applications in the target environment (Fig. 2, element 202)

analyzing the defect data in the target computer environment (Fig. 2, element 206)

and predicting a transaction failure rate for the business transaction operating within the computer environment with the one or more other software applications (Fig. 2, element 204).

As per claim 2, Gullo discloses wherein the gathered defect data includes unit test data (page 3, paragraph [0042], lines 11-15).

As per claim 3, Gullo discloses wherein the gathered defect data includes functional test data (page 3, paragraph [0042], lines 11-15).

As per claim 4, Gullo discloses wherein the gathered defect data includes system test data (page 3, paragraph [0042]).

As per claim 5, Gullo discloses wherein the gathered defect data includes translation test data (page 3, paragraph [0042]).

As per claim 6, Gullo discloses wherein the gathered defect data includes performance test data (page 6, paragraph [0080]).

As per claim 7, Gullo discloses wherein the gathered defect data includes integration test data (page 3, paragraph [0042]).

As per claim 8, Gullo discloses further comprising the step of outputting the predicted transaction failure rate (Fig. 1, element 110).

As per claim 9, Gullo discloses a system for assessing the probability of business transaction success that will interact with one or more software applications in a target computer environment (fig. 2), the system comprising:

defect data-gathering logic for gathering defect data for the first software application defect data (Fig. 2, element 202)

defect analysis logic for analyzing the defect data in view of the one or more software applications and the target computer environment (Fig. 2, element 206) and failure prediction logic for predicting a transaction failure rate for the business transaction operating within the computer environment with the one or more other software applications (Fig. 2, element 204).

As per claim 10, Gullo discloses wherein the gathered defect data includes unit test data (page 3, paragraph [0042], lines 11-15).

As per claim 11, Gullo discloses wherein the gathered defect data includes functional test data (page 3, paragraph [0042], lines 11-15).

As per claim 12, Gullo discloses wherein the gathered defect data includes system test data (page 3, paragraph [0042]).

As per claim 13, Gullo discloses wherein the gathered defect data includes translation test data (page 3, paragraph [0042]).

As per claim 14, Gullo discloses wherein the gathered defect data includes performance test data (page 6, paragraph [0080]).

As per claim 15, Gullo discloses wherein the gathered defect data includes integration test data (page 3, paragraph [0042]).

As per claim 16, Gullo discloses wherein the system further outputs the predicted business transaction failure rate (Fig. 1, element 110).

As per claim 17, Gullo discloses a system for assessing the probability of transaction success of a business transaction that will interact with one or more other software applications in a target computer environment (Fig. 2), the system including:

a means for gathering defect data for the software applications in the target computer environment (Fig. 2, element 202)

a means for analyzing the defect data in view of the one or more other software applications and the target computer environment (Fig. 2, element 206)

and a means for predicting a transaction failure rate for the first software application operating within the computer environment with the one or more other software applications (Fig. 2, element 204).

Related Prior Art

The following prior art is considered to be pertinent to applicant's invention, but nor relied upon for claim analysis conducted above.

Eastman et al. (U.S. Patent No. 6,226,597), "Method of maintaining components subject to fatigue failure".

Ott et al. (U.S. Patent No. 6,367,040), "System and method for determining yield impact for semiconductor devices".


Graichen et al. (U.S. Patent No. US 7,107,491), "System, method and computer product for performing automated predictive reliability".

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elmira Mehrmanesh whose telephone number is (571) 272-5531. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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